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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAMETEK LLC,

Plaintiff,

vs.

CROWDSTAR INTERNATIONAL
LIMITED; CROWDSTAR INC.;
AND CROWDSTAR NETWORK,
LLC,

Defendants.

CASE NO. 12-CV-2931 BEN (RBB)

**ORDER GRANTING MOTION
TO TRANSFER VENUE TO THE
NORTHERN DISTRICT OF
CALIFORNIA**

[Docket No. 24]

Presently before the Court is a Motion to Transfer Venue to the United States District Court for the Northern District of California filed by Defendants Crowdstar International Limited, Crowdstar Inc., and Crowdstar Network, LLC (collectively, "Crowdstar"). (Docket No. 24.) For the reasons stated below, the Motion is **GRANTED.**

BACKGROUND

Crowdstar International Limited is an Irish corporation with its principal place of business in Dublin, Ireland. (Bourne Decl. ¶ 4.) Crowdstar Inc. is a Delaware corporation with its headquarters and principal place of business in Burlingame, California. (*Id.* ¶ 5.) Crowdstar Network, LLC is a Delaware limited liability corporation with its principal place of business in Burlingame, California. (*Id.* ¶ 6.)

1 Plaintiff GameTek, LLC is a California limited liability company with its principal
2 place of business in Newport Beach, California. (Haynes Decl. ¶ 2.) GameTek filed
3 a Complaint against Crowdstar on December 10, 2012, alleging infringement of U.S.
4 Patent No. 7,076,445 (the '445 Patent). (Docket No. 1.)

5 DISCUSSION

6 “For the convenience of parties and witnesses, in the interest of justice, a district
7 court may transfer any civil action to any other district or division where it might have
8 been brought or to any district or division to which all parties have consented.” 28
9 U.S.C. § 1404(a). In deciding whether to transfer an action under § 1404(a), a court
10 must determine: (1) whether the transferee district is a district in which the action
11 “might have been brought,” and (2) whether the action should be transferred for
12 purposes of convenience, judicial economy, or in the interest of justice. *Van Dusen v.*
13 *Barrack*, 376 U.S. 612, 616 (1964).

14 I. WHERE THE ACTION “MIGHT HAVE BEEN BROUGHT”

15 The parties agree that the present suit might have been brought in the Northern
16 District of California. (Mot. at 8; Opp. at 6-7.)

17 II. CONVENIENCE, JUDICIAL ECONOMY, AND THE INTEREST OF JUSTICE

18 Next, the Court must determine whether the “convenience of the parties and
19 witnesses” and the “interest of justice” compel transferring venue. Factors relevant to
20 that determination include:

21 (1) the plaintiff’s choice of forum, (2) convenience to the parties, (3)
22 convenience to the witnesses, (4) ease of access to the evidence, (5)
23 familiarity of each forum with the applicable law, (6) the feasibility of
24 consolidation with and relationship to other claims, (7) any local interest
in the controversy, and (8) the relative court congestion and time of trial
in each forum.

25 *Albertson v. Monumental Life Ins. Co.*, No. C-08-05441, 2009 WL 3870301, at *1
26 (N.D. Cal. Nov. 16, 2009) (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495,
27 498-99 (9th Cir. 2000)).
28

1 **A. Plaintiff's Choice of Forum**

2 GameTek's choice of the Southern District as the forum is entitled to deference.
3 However, courts have held that when a plaintiff brings suit in a jurisdiction that is not
4 its location of residence and lacks significant connection to the alleged infringement,
5 the deference is substantially reduced. *See Inherent v. Martindale-Hubbell*, 420 F.
6 Supp. 2d 1093, 1100 (N.D. Cal. 2006). GameTek is not located in the Southern
7 District, and this forum lacks significant connection to the alleged infringement
8 involving Crowdstar. Therefore, while some deference is accorded to GameTek's
9 choice of forum, this factor only slightly favors retaining this action in the Southern
10 District.

11 **B. Convenience to the Parties**

12 Crowdstar has no significant contacts with the Southern District. All of
13 Crowdstar's offices are located in either Burlingame, in the Northern District, or
14 Dublin, Ireland. (Bourne Decl. ¶ 8.) None of the accused products was developed or
15 run out of the Southern District; rather, most of the accused products were designed
16 and developed in Burlingame. (*Id.* ¶¶ 9, 14.) As discussed below, the majority of
17 Crowdstar witnesses will be from the Northern District.

18 Similarly, GameTek lacks any significant contact with the Southern District.
19 GameTek's only place of business is located in the Central District. (Haynes Decl. ¶ 2.)
20 As discussed below, the only two employees that GameTek lists in its Initial
21 Disclosures who may have relevant information are located in the Central District.
22 (Gaedt Decl., Exh. C.) In addition, the prosecuting attorneys of the '445 Patent and the
23 alleged inventor are located outside of the Southern District, and their attendance
24 would be equally inconvenient whether the case was tried in the Southern or Northern
25 District. (*Id.*) Because the costs and inconvenience to GameTek would not be
26 significantly increased given a transfer, but the costs and inconvenience to Crowdstar
27 would be significantly reduced, this factor weighs in favor of transfer.

1 **C. Convenience to the Witnesses**

2 The convenience to the witnesses favors transfer to the Northern District. “To
3 show inconvenience to witnesses, the moving party should state the witnesses’
4 identities, locations, and content and relevance of their testimony.” *Meyer Mfg. Co.*
5 *Ltd. v. Telebrands Corp.*, No. CIV. S–11–3153, 2012 WL 1189765, at *6 (E.D. Cal.
6 Apr. 9, 2012). “The relative convenience to the witnesses is often recognized as the
7 most important factor to be considered in ruling on a motion under § 1404(a).” *Saleh*
8 *v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005) (internal quotation marks
9 omitted).

10 Based on the parties’ Initial Disclosures, most of the witnesses in this action will
11 be from the Northern District. Crowdstar identifies two employees as potential
12 technical witnesses who may testify “regarding the development, functionality,
13 operation, finance, and marketing of the accused products.” (Bourne Decl. ¶ 11.) Both
14 are located in the Northern District. (*Id.*) In addition, several relevant Facebook
15 employees who have knowledge of Facebook’s interactions with Crowdstar are likely
16 located at the headquarters of Facebook—Menlo Park, California. (*Id.* ¶ 17.) On the
17 other hand, GameTek lists only two employees in its Initial Disclosures who may have
18 relevant information, and they are both located outside of the Southern District, in the
19 Central District. (Gaedt Decl., Exh. C.)

20 Both parties agree that other relevant witnesses—including the inventor of the
21 ’445 Patent and the attorneys who prosecuted the ’445 Patent—are all located outside
22 of California, and their attendance would be equally inconvenient whether the case was
23 tried in the Southern or Northern District. (*Id.* ¶ 14, Exh. C.) Accordingly, this factor
24 weighs in favor of transfer.

25 **D. Ease of Access to the Evidence**

26 Ease of access to the evidence favors transfer to the Northern District. “In patent
27 infringement cases, the bulk of the relevant evidence usually comes from the accused
28 infringer. Consequently, the place where the defendant’s documents are kept weighs

1 in favor of transfer to that location.” *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed.
2 Cir. 2009) (internal quotation marks omitted).

3 Because Crowdstar’s headquarters and offices most related to the accused
4 products are located in the Northern District or out of the country, most of Crowdstar’s
5 computers, servers, source code, and other documentation are either located in, or can
6 be most easily accessed from, within the Northern District. (Bourne Decl. ¶¶ 4-6, 8,
7 14.) Crowdstar does not maintain any records, servers, offices, employees, or
8 operations relevant to the accused products in the Southern District. (*Id.* ¶¶ 8, 9, 14.)
9 Moreover, any allegedly infringing actions related to the accused products likely
10 occurred outside of the Southern District because none of the games at issue are
11 operated in the Southern District. (*Id.* ¶ 9.) In addition, many non-product specific
12 activities, such as activities related to payments, are primarily performed in the
13 Northern District. (*Id.* ¶ 18.)

14 First, GameTek argues that because all of its documents are in Newport Beach,
15 the Southern District is more convenient in terms of ease of access to evidence.
16 Newport Beach is not located in the Southern District, but rather in the Central District.
17 In addition, as a non-practicing entity, GameTek is unlikely to have a large number of
18 documents to produce.

19 Second, GameTek argues that the majority of documents in this action will be
20 exchanged electronically, and since electronic files are easily transportable, no
21 additional burden would be incurred upon Crowdstar if the venue remains in the
22 Southern District. This does not weigh against transfer. “Although it is true that given
23 technological advances in document storage and retrieval, transporting documents
24 between districts does not generally create a burden, it is no less true that litigation
25 should proceed where the case finds its center of gravity.” *Tessenderlo Kerley, Inc. v.*
26 *D&M Chem., Inc.*, No. C 11-03955, 2011 WL 5362080, at *3 (N.D. Cal. Nov. 7, 2011)
27 (internal quotation marks, alteration, and citation omitted); *see also In re TS Tech USA*
28 *Corp.*, 551 F.3d 1315, 1321 (Fed. Cir. 2008). The center of gravity of this dispute is

1 likely where Crowdstar is located, which is the Northern District. Accordingly, ease
2 of access to the evidence weighs in favor of transfer.

3 **E. Feasibility of Consolidation**

4 Feasibility of consolidation is neutral. There are related cases pending in both
5 the Southern and Northern Districts. GameTek has brought suit against other
6 defendants in this Court, asserting the same patent. On the other hand, five other cases
7 involving the same patent—*GameTek LLC v. Gameview Studios, LLC*, Case No. 12-
8 CV-499, *GameTek LLC v. Electronic Arts Inc.*, Case No. 12-CV-2927, *GameTek LLC*
9 *v. Funzio, Inc.*, Case No. 12-CV-2928, *GameTek LLC v. Zynga Inc.*, Case No. 12-CV-
10 02933, and *GameTek LLC v. RockYou, Inc.*, Case No. 12-CV-2936—have been
11 transferred to the Northern District. In addition, a motion to transfer venue to the
12 Northern District has been filed in one other related case—*GameTek LLC v. Cie*
13 *Games, Inc.*, Case No. 12-CV-2930. At least five related actions, therefore, will be
14 litigated in the Northern District, meaning that a judge in the Northern District will be
15 familiar with the claims, prior art, and patent at issue here.

16 GameTek argues that Crowdstar improperly delayed filing the present Motion
17 to Transfer for five months. At the time the Motion to Transfer was filed, Crowdstar
18 had yet to serve its invalidity contentions and the parties had yet to begin the claim
19 construction process. In addition, GameTek is a non-practicing entity, meaning that
20 it will not lose sales proceeds during the pendency of this action and any damages to
21 which it is entitled may be adequately compensated at a future date. Thus, GameTek
22 will not be unduly prejudiced. Accordingly, this factor is neutral.

23 **F. Local Interest in the Controversy**

24 The local interest in the controversy favors transfer to the Northern District. As
25 stated above, Crowdstar's headquarters and other offices are located in the Northern
26 District and internationally. (Bourne Decl. ¶¶ 4-6.) Crowdstar has no offices in the
27 Southern District. (*Id.* at ¶ 8.) In addition, none of the accused products were
28 developed or run in the Southern District. (*Id.* at ¶ 9.) Consequently, the majority of

1 employees familiar with the accused products and those most likely to be affected by
2 this litigation, are located in the Northern District. The Northern District has a strong
3 local interest in deciding this action.

4 On the other hand, the Southern District has no relation to the parties or the
5 alleged harm in this case. Therefore, the Southern District has no local interest in
6 deciding this matter. Indeed, GameTek concedes that the Northern District has a
7 greater local interest in this matter than the Southern District. (Opp. at 16.)
8 Accordingly, this factor favors transfer.

9 **G. Remaining Factors**

10 The remaining factors—familiarity of each forum with the law and court
11 congestion and time to trial—are either neutral or slightly favor transfer. First, because
12 the governing law is federal patent law, the Southern and Northern Districts are equally
13 situated to decide the applicable legal issues. *See TS Tech*, 551 F.3d at 1320. Second,
14 the relative congestion of the dockets and speed of disposition weigh slightly in favor
15 of transfer. (See Gaedt Decl., Exh. O (showing that the median time from filing to
16 disposition of civil cases through trial was 30.3 months in the Southern District
17 compared to 25.3 months in the Northern District in 2011).)

18 In light of the above, the Court finds that the convenience to the witnesses,
19 convenience to the parties, ease of access to evidence, and local interest in the
20 controversy outweigh the plaintiff's choice of forum and compel transferring venue to
21 the Northern District.

22 **CONCLUSION**

23 Accordingly, Crowdstar's Motion to Transfer Venue is **GRANTED**. This action
24 is **TRANSFERRED** to the United States District Court for the Northern District of
25 California.

26 **IT IS SO ORDERED.**

27 DATED: 7/24/13

28 
HON. ROGER T. BENITEZ
United States District Judge